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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,628	02/01/2006	Henryk Kulakowski	64640.000003	8981

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02/02/2010

EXAMINER
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LEWIS, JONATHAN V

ART UNIT	PAPER NUMBER
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2425

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,628	<b>Applicant(s)</b> KULAKOWSKI, HENRYK	
	<b>Examiner</b> JONATHAN LEWIS	<b>Art Unit</b> 2425	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 16-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-38 is/are rejected.
- 7) ☒ Claim(s) 16-38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 9-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

Claims 16-38 are objected to because of the following informalities: the claims include numbering referring to figures that contain new matter. The figures are not accepted, and the numbering in the body of the claim language should be removed. Appropriate correction is required.

### ***Specification***

The amendment filed October 27, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Figures 1 and 2 did not exist in the originally filed application, and are not adequately described in the specification. Removal of these figures is required.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16-38 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Figures 1 and 2 show elements that are critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Claims 16-38 describe elements 10-14, 101-108 of Figs. 1 & 2; however, the original specification had none of these elements disclosed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 16-17, 24-25, 27-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. (US PG Pub. No. 2004/0109087) in view of Dimitrova et al. (US PG Pub. No. 2003/0110507).**

**Regarding claim 16**, Robinson et al. teaches a method of ordering goods and services related to information content being transmitted from the content providing broadcaster to a consumer (Abstract), implementation of which is based on: a data tag containing: consumer identifier, broadcaster identifier, and the time the consumer received the transmission fragment, transmitted by the broadcaster (13), that is of specific interest to the consumer (10) (paragraph 0029 discloses the information, data tag, identifying the consumer and broadcaster; 0019 discloses information regarding the element and the time the element is selected is used to determine the element's ID; Fig.

Art Unit: 2425

3 shows the tag source 40 and content source 32 sending tag information); a transmission list containing the information on the schedule and content of the transmission fragments of the broadcaster transmission (paragraph 0015 discloses a "list" of items that are identified during the editing process and sent with the broadcast to identify specific elements available for purchase); a server (22) comprised of processing hardware and application software accepting data tags from consumers (10) via data communications network (14) and generating offers for products and services based on said data tags (Fig. 3); an electronic terminal (11) generating data tags and transmitting data tags via data communications network (14) to server (12) (Fig. 3, 26 and 30 transmitting to server 34; paragraphs 0045-0046, 0048); implemented in the following steps: the server (12) receives (101) a transmission list that describes the content and the schedule of the broadcaster's (13) transmission (paragraph 0027 discloses the server receiving the time indexed x-y coordinates of the locations of the elements); the consumer (10) receives (102) the transmission content from the broadcaster (13) (paragraph 0028); the server (12), having recognized the transmission fragment, obtains (106) information on goods and services related to that fragment and generates an offer (107) for the consumer (10) (paragraph 0010 discloses the offer for a dress for sale after the user has pointed and selected it; paragraph 0032 discloses the tagged item for sale) the consumer {10} accesses the server (22) via the data communications network (14) and purchases (108) goods and services offered based on the data tags related to said goods and services (paragraph 0029 discloses the use of the server for the purchase; paragraph 0045).

Robinson et al. teaches all the claim limitations as stated above, except the consumer (10) creates (103) a data tag with the use of the electronic terminal (11); the data tag is transmitted (104) via a data communications network from the electronic terminal (11) to the server (12); the server (12), based on the information contained in the data tag and the transmission list, exactly identifies and recognizes (105) the transmission fragment which is of interest to the consumer (10).

However, Dimitrova et al. teaches the consumer (10) creates (103) a data tag with the use of the electronic terminal (11) (paragraph 0031 discloses the user creating a data tag through the use of the electronic terminal 20); the data tag is transmitted (104) via a data communications network from the electronic terminal (11) to the server (12) (paragraph 0031; Fig. 1 shows the communication sent to the server 15); the server (12), based on the information contained in the data tag and the transmission list, exactly identifies and recognizes (105) the transmission fragment which is of interest to the consumer (10) (Fig. 2 shows the flow chart of the transmission of the preferences, filtering, and search based on the user input as disclosed in paragraphs 0032-0033).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use, to modify Robinson to allow a consumer to create a data tag that is sent to a server that identifies and the object of interest to the consumer, in order to assist the consumer in making the best shopping decisions, by increasing the user friendliness and amount of information available for education choices.

**Regarding claim 17**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a telephone

Art Unit: 2425

handset from which the consumer (10) makes a connection to the server (12) using a destination telephone number uniquely assigned to the broadcaster, and where a data tag is generated by the server (12) based on the source telephone number assigned to the electronic terminal (11) used as consumer identifier, the destination telephone number assigned to and identifying the broadcaster, and the time of connection request from the electronic terminal (11) received by the server (12), which identifies the time when the consumer (10) received the transmission fragment of interest.

However, Robinson et al. teaches the electronic terminal (11) is a telephone handset from which the consumer (10) makes a connection to the server (12) using a destination telephone number uniquely assigned to the broadcaster, and where a data tag is generated by the server (12) based on the source telephone number assigned to the electronic terminal (11) used as consumer identifier, the destination telephone number assigned to and identifying the broadcaster, and the time of connection request from the electronic terminal (11) received by the server (12), which identifies the time when the consumer (10) received the transmission fragment of interest (0041-0044; Fig. 1).

**Regarding claim 24**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the server (12), having received the data tag from consumer's electronic terminal (11), transmits back to the electronic terminal an offer of goods and services related to that data tag.

However, Robinson et al. teaches the server (12), having received the data tag from consumer's electronic terminal (11), transmits back to the electronic terminal an offer of goods and services related to that data tag (Abstract; 0010; 0032).

**Regarding claim 25**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the data tag is transmitted from the electronic terminal (11) to the server (12) after the terminal has been directly connected to and synchronized with an Internet enabled electronic hardware appliance.

However, Robinson et al. teaches the data tag is transmitted from the electronic terminal (11) to the server (12) after the terminal has been directly connected to and synchronized with an Internet enabled electronic hardware appliance (0031).

**Regarding claim 27**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the offer of goods and services related to the data tag is made available to the consumer (10) on the server (12) via a web browser access.

However, Robinson et al. teaches the offer of goods and services related to the data tag is made available to the consumer (10) on the server (12) via a web browser access (Fig. 3; 0048).

**Regarding claim 28**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the offer of goods and services related to the consumer data tag is made available to the consumer (10) from a dedicated software application running on any Internet enabled electronic hardware appliance.



However, Robinson et al. teaches the offer of goods and services related to the consumer data tag is made available to the consumer (10) from a dedicated software application running on any Internet enabled electronic hardware appliance (0031-0032).

**Regarding claim 29**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the functions of electronic terminal (11) are emulated by a software application running on the server (12) and accessed via a web browser.

However, Robinson et al. teaches the functions of electronic terminal (11) are emulated by a software application running on the server (12) and accessed via a web browser (0031-0032).

**Regarding claim 30**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a personal media player.

However, Robinson et al. teaches the electronic terminal (11) is a personal media player (0044).

**Regarding claim 31**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a satellite receiver.

However, Robinson et al. teaches the electronic terminal (11) is a satellite receiver (0044).

**Regarding claim 32**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a radio receiver.

Art Unit: 2425

However, Robinson et al. teaches the electronic terminal (11) is a radio receiver (0040-0041).

**Regarding claim 33**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a TV set.

However, Robinson et al. teaches the electronic terminal (11) is a TV set (0012).

**Regarding claim 34**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a TV set.

However, Robinson et al. teaches the electronic terminal (11) is a TV set (0012).

**Regarding claim 35**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a remote control unit.

However, Robinson et al. teaches the electronic terminal (11) is a remote control unit (0020).

**Regarding claim 36**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a smart phone.

However, Robinson et al. teaches the electronic terminal (11) is a smart phone (0041).

**Regarding claim 37**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a Personal Digital Assistant electronic appliance.

However, Robinson et al. teaches the electronic terminal (11) is a Personal Digital Assistant electronic appliance (0041).

Art Unit: 2425

**Regarding claim 38**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the electronic terminal (11) is a personal computer.

However, Robinson et al. teaches the electronic terminal (11) is a personal computer (0041).

**Claims 18-20, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. (US PG Pub. No. 2004/0109087) in view of Dimitrova et al. (US PG Pub. No. 2003/0110507) in further view of Barthelemy (WO 03/094491).**

**Regarding claim 18**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the consumer (10) makes a connection to the server (12) using the destination telephone number which is the same for all broadcasters and the unique broadcaster identifier is entered into the electronic terminal (11) by the consumer (10) and transmitted to the server (22) in the course of the connection.

However, Barthelemy teaches the consumer (10) makes a connection to the server (12) using the destination telephone number which is the same for all broadcasters and the unique broadcaster identifier is entered into the electronic terminal (11) by the consumer (10) and transmitted to the server (22) in the course of the connection (page 2, line 50 – page 3, line 22 discloses the financial system has a special number for the transaction).

Art Unit: 2425

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use, to modify Robinson and Dimitrova to utilize a destination phone number with to identify consumers through a connected server, in order to maintain privacy, security, and simplicity when allowing a consumer to pay merchants via electronic equipment in a user friendly way.

**Regarding claim 19**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the connection between the electronic terminal (11) and the server (12) is accomplished with the use of Short Messaging System (SMS).

However, Barthelemy teaches the connection between the electronic terminal (11) and the server (12) is accomplished with the use of Short Messaging System (SMS) (page 5, lines 29-43).

**Regarding claim 20**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the connection between the electronic terminal (11) and the server (12) is accomplished with the use of the Unstructured Supplementary Service Data (USSD) channel.

However, Barthelemy teaches the connection between the electronic terminal (11) and the server (12) is accomplished with the use of the Unstructured Supplementary Service Data (USSD) channel (page 5, lines 29-43).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use, to modify Robinson and Dimitrova to utilize a

Art Unit: 2425

USSD channel, in order to maintain privacy, security, and simplicity when allowing a consumer to pay merchants via electronic equipment in a user friendly way.

**Regarding claim 22**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the connection between the electronic terminal (11) and the server (12) is accomplished with the use of the voice channel.

However, Barthelemy teaches the connection between the electronic terminal (11) and the server (12) is accomplished with the use of the voice channel (page 7, lines 46-57).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use, to modify Robinson and Dimitrova to utilize a voice channel, in order to maintain privacy, security, and simplicity when allowing a consumer to pay merchants via electronic equipment in a user friendly way.

**Regarding claim 23**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the connection between the electronic terminal (11) and the server (12) is accomplished with the use of the voice channel.

However, Barthelemy teaches the connection between the electronic terminal (11) and the server (12) is accomplished with the use of the voice channel (page 7, lines 46-57).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use, to modify Robinson and Dimitrova to utilize a voice channel, in order to maintain privacy, security, and simplicity when allowing a consumer to pay merchants via electronic equipment in a user friendly way.

**Claims 21, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. (US PG Pub. No. 2004/0109087) in view of Dimitrova et al. (US PG Pub. No. 2003/0110507) in further view of Hasmanis et al. (US Pat. No. 7,502,453).**

**Regarding claim 21**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the connection between the electronic terminal (12) and the server (12) is accomplished with the use of the Internet Protocol (IP) based data communications channel.

However, Hasmanis et al. teaches the connection between the electronic terminal (12) and the server (12) is accomplished with the use of the Internet Protocol (IP) based data communications channel (col. 2, line 66 – col. 3, line 40).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use, to modify Robinson and Dimitrova to connect to the server using synchronized IP, in order to provide the consumers with quick and efficient service after an order has been placed.

**Regarding claim 26**, Robinson et al. in view of Dimitrova et al. teaches all the claim limitations as stated above, except the data tag is transmitted from the electronic terminal (11) to the server (12) after the terminal has been directly connected to and synchronized with an Internet enabled electronic hardware appliance.

However, Hasmanis et al. teaches the data tag is transmitted from the electronic terminal (11) to the server (12) after the terminal has been directly connected to and

Art Unit: 2425

synchronized with an Internet enabled electronic hardware appliance (col. 2, line 66 – col. 3, line 40).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Kenney US Pat. No. 6,026,376
- b. Sanchez et al. US PG Pub. No. 2002/0194604
- c. Karas et al. US PG Pub. No. 2003/0086409
- d. Hardingham et al. US PG Pub. No. 2003/0167469
- e. Zigmond et al. US Pat. No. 6,966,066
- f. Zigmond et al. US PG Pub. No. 2005/0273832
- g. Barthelemy US PG Pub. No. 2009/0248582

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN LEWIS whose telephone number is (571)270-3233. The examiner can normally be reached on Mon - Fri 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Pendleton can be reached on (571) 272-7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2425

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian T. Pendleton/  
Supervisory Patent Examiner, Art Unit 2425